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REPLY

There Is No Deal

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Angus Mackenzie seems determined to prove that the A.C.L.U. has joined the C.I.A. in a sinister "deal" to sell out the Freedom of Information Act. In his zeal to portray the A.C.L.U. with unclean hands, he has distorted or ignored its explanation of its position on S. 1324 in public testimony and in conversations between himself and A.C.L.U. lawyers.

The A.C.L.U. has made no "deal" and does not support the version of S. 1324 that is now before the Senate Intelligence Committee. That was stated explicitly by Mark Lynch in his testimony on behalf of the A.C.L.U. at the committee's hearing on June 28. The last paragraph of that testimony describes the A.C.L.U. position concisely:

> In summary, if this bill will not result in the loss of information now available under the FOIA, if it will result in improved processing of requests, and if the other problems I have identified, as well as any other legitimate problems which may be identified by others, are resolved, the ACLU will support this bill.

Contrary to Mackenzie's statements, the A.C.L.U. is taking that position not because of some prior commitment but because it believes it to be substantively correct and in the best interests of those who favor open government. The A.C.L.U. is not, as Mackenzie disparagingly asserts, "nit-picking" over the language of S. 1324. If the bill is amended to eliminate the problems the A.C.L.U., various press and historians' groups and others have identified, the A.C.L.U. believes it will improve C.I.A. compliance with the F.O.I.A. If the necessary changes are not made, the A.C.L.U. will oppose the bill.

In the meantime, those of us involved in this legislation would welcome the opportunity to talk to those "critics" and "information experts" who, if Mackenzie states their view correctly, think the A.C.L.U. is being taken for a ride. Except for David Sobel, they have not brought their opinions directly to our attention.

Sobel's concern, insofar as it has not been overstated by Mackenzie, is a valid one. His solution—maintaining full search requirements when a domestic organization requests information about itself—is one of several changes proposed to the Intelligence Committee by people outside the A.C.L.U. that we support. The A.C.L.U. has never claimed a monopoly on wisdom in these areas, and it has publicly stated its intention to support any proposals it thinks will improve the bill.

As for Mackenzie's critique of the bill, there is little that requires a response. Much of his criticism is based on materials the A.C.L.U. provided him upon request, and reflects the positions the A.C.L.U., press groups and historians took in the Senate hearings. We all agree that the bill must be amended to insure that no useful information that was released in the past would be exempt from search and review. Similarly, we all agree that Congress must insure that the C.I.A. will live up to its promise to process F.O.I.A. requests more expeditiously.

On one point, however, Mackenzie simply misunderstands the bill. It does not create a new exemption for any information. Any intelligence information that is exempt from release now because it identifies sources or methods would continue to be exempt, but the bill would not provide a rationale or authority for withholding additional information.

When the Senate Intelligence Committee completes its review of the bill and is ready to vote on a revised version, the A.C.L.U., press groups and others will have to decide whether it is acceptable. There will be then, as there is now, room for genuine debate and disagreement over the likely consequences of enactment and the appropriate legislative strategy to follow. However, that debate—and the subsequent efforts of all who participate in it—will not be enhanced by a search for secret and impure motives on the part of those who have been in the front lines of the battle to preserve and to implement the F.O.I.A. □

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